

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KELLY ANNE WALTERS,
Petitioner,
v.
R. J. GARCIA,
Respondent.

Case No. [21-cv-06231-WHO](#) (PR)

**ORDER DIRECTING PETITIONER
TO FILE A RESPONSE TO THIS
ORDER ON OR BEFORE
FEBRUARY 15, 2022**

This federal action was filed by Kelly Anne Walters, a federal prisoner, as a 28 U.S.C. § 2241 petition for writ of habeas corpus, that is, as a challenge to the lawfulness or duration of her incarceration. A review of the petition, however, shows that Walters seeks reinstatement of her telephone privileges rather than release from custody. (Pet., Dkt. No. 1 at 6-7.) Because success on her claims will not affect the length of her incarceration, her claims are not the proper subject of a habeas action. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (habeas corpus action proper mechanism for challenging “legality or duration” of confinement). Walters may pursue her claims only through a civil rights action.

In light of this, Walters must inform the Court by **February 15, 2022** in writing whether she wishes to the Court to convert this federal habeas action to a federal civil rights action. Before she makes her decision, she should be aware of the following. The filing fee for a habeas petition is five dollars; for civil rights cases, however, the fee is now \$402.00 (\$350.00 if pauper status is granted) and under the Prisoner Litigation Reform Act the prisoner is required to pay it, even if granted *in forma pauperis* status, by way of deductions from income to the prisoner’s trust account. *See* 28 U.S.C. § 1915(b). A


prisoner who might be willing to file a habeas petition for which he or she would not have to pay a filing fee might feel otherwise about a civil rights complaint for which the \$402.00 fee would be deducted from income to his or her prisoner account. Also, a civil rights complaint which is dismissed as malicious, frivolous, or for failure to state a claim would count as a “strike” under 28 U.S.C. § 1915(g), which is not true for habeas cases.

If Walters chooses to pursue this suit as a civil rights action, the Court then will set a deadline for her to file a civil rights complaint and to file an application to proceed *in forma pauperis* (or pay the full filing fee). If Walters instead chooses to pursue this suit as a habeas action, it will be dismissed for failure to state a habeas claim. She would then have to file an amended petition in which she raises challenges to her conviction and show why such a challenge should not be filed in Idaho, where she was convicted, rather than here in the Northern District of California, where she is incarcerated.¹

Failure to file a proper written response to this Order by February 15, 2022 will result in the dismissal of this action for failure to prosecute, see Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: January 4, 2022


WILLIAM H. ORRICK
United States District Judge

¹ This Court is likely not the proper forum in which to challenge Walters’s conviction. She was convicted in the District Court of Idaho. (Pet., Dkt. No. 1 at 1.) As a general rule, federal prisoners must pursue habeas relief in the district of conviction by way of a motion filed under 28 U.S.C. § 2255. *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006). A federal prisoner may file a petition under § 2241 in the district of confinement if he or she can show that a motion under § 2255 is “inadequate or ineffective to test the validity of his detention.” *Hernandez v. Campbell*, 204 F.3d 861, 864-65 (9th Cir. 2000). The Ninth Circuit has recognized it as a very “narrow exception,” however. *United States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997).